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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 CHARMANE SMITH,

9 Plaintiff,

10 v.

11 AMAZON,

12 Defendant.  
13

CASE NO. C18-1607-JCC

ORDER

14 This matter comes before the Court on its pre-service review of Plaintiff Charmane  
15 Smith's amended complaint (Dkt. No. 8) pursuant to 28 U.S.C. section 1915(e)(2)(b). On  
16 November 8, 2018, United States Magistrate Judge Hon. Mary Alice Theiler granted Plaintiff's  
17 motion to proceed *in forma pauperis*. (Dkt. No. 4.) In her order, Judge Theiler recommended that  
18 the Court review Plaintiff's complaint pursuant to 28 U.S.C. section 1915(e)(2)(b). (*Id.*) The  
19 Court reviewed Plaintiff's complaint and determined that it failed to state a claim upon which  
20 relief could be granted. (*See* Dkt. No. 7.) The Court directed Plaintiff to file an amended  
21 complaint to correct the deficiencies identified in its order. (*Id.*)  
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1 On December 10, 2018, Plaintiff timely filed an amended complaint.<sup>1</sup> (Dkt. No. 8.) Like  
2 before, the Court finds that the amended complaint fails to state a claim upon which relief can be  
3 granted. For the following reasons, the Court DISMISSES Plaintiff's amended complaint  
4 without leave to amend.

5 Once a complaint is filed *in forma pauperis*, the Court must dismiss it prior to service if it  
6 "fails to state a claim on which relief can be granted." 28 U.S.C. § 1915(e)(2)(b)(ii); *see Lopez v.*  
7 *Smith*, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). To avoid dismissal, a complaint must  
8 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its  
9 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The factual allegations must be "enough to  
10 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
11 555 (2007). The complaint may be dismissed if it lacks a cognizable legal theory or states  
12 insufficient facts to support a cognizable legal theory. *Zixiang v. Kerry*, 710 F.3d 995, 999 (9th  
13 Cir. 2013). "[T]he pleading standard Rule 8 announces does not require 'detailed factual  
14 allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
15 accusation." *Iqbal*, 556 U.S. at 678 (citation omitted).

16 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented  
17 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.  
18 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, section 1915(e) "not only permits but  
19 requires a district court to dismiss an *in forma pauperis* complaint that fails to state a claim."  
20 *Lopez*, 203 F.3d at 1229. When dismissing a complaint under section 1915(e), the Court gives  
21 *pro se* plaintiffs leave to amend unless "it is absolutely clear that the deficiencies of the  
22 complaint could not be cured by amendment." *Cato v. United States*, 70 F.3d 1103, 1106 (9th  
23 Cir. 1995).

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<sup>1</sup> The amended complaint was initially filed under a separate cause number. *See Smith v. Amazon*, Case No. C18-1780-JCC, Dkt. No. 1 (W.D. Wash. Dec. 10, 2018).

1 In its prior order, the Court stated that Plaintiff failed “to allege sufficient facts to  
2 demonstrate that Defendant is liable for the misconduct alleged.” (Dkt. No. 7 at 3.) The original  
3 complaint asserted that Plaintiff was entitled to relief under the “Consumer Protection Act  
4 (Product Liability Tort-Negligence) & Title 18 U.S.C. § 2520 – Wire, Oral, and Electronic  
5 Interception.” (Dkt. No. 5 at 3.) In its order, the Court noted that the complaint did not  
6 sufficiently allege what law or cause of action entitled Plaintiff to the relief she sought. (Dkt. No.  
7 7 at 3.) Similarly, while the amended complaint makes reference to “design defect” and “strict  
8 liabilities,” it does not cite a specific statute or allege a cause of action that would plausibly  
9 entitle Plaintiff to relief. (Dkt. No. 8 at 3.)

10 Even if the Court liberally construes the amended complaint as asserting a claim under  
11 Washington’s Product Liability Statute (“PLA”), Revised Code of Washington section 7.72,  
12 Plaintiff has failed to provide sufficient facts to support such a claim. The PLA provides the  
13 exclusive remedy for product liability claims in Washington. *Washington Water Power Co. v.*  
14 *Graybar Elec. Co.*, 774 P.2d 1199, 1207 (Wash. 1989). A manufacturer can be liable under the  
15 PLA if its product is not reasonably safe as designed (design defect claim) or because it failed to  
16 provide adequate warnings or instructions (failure to warn claim). Wash. Rev. Code  
17 § 7.72.030(1). A manufacturer can also be held strictly liable “if the claimant’s harm was  
18 proximately caused by the fact that the product was not reasonably safe in construction or not  
19 reasonably safe because it did not conform to the manufacturer’s express warranty or to the  
20 implied warranties under Title 62A RCW.” Wash. Rev. Code § 7.72.030(2).

21 The amended complaint, in its entirety, contains the following allegations against  
22 Defendant: “My Amazon Fire Tablet has been damaged by its faulty processing of applications  
23 installed and/or distributed through the Silk browser. Inability to use the tablet obstructed  
business plan/ventures estimated to be in excess of \$10 million. Design defect, secondary,  
indirect, enterprise, & strict liabilities.” (Dkt. No. 8 at 5.) These allegations are almost a mirror  
image of the original complaint. (*Compare* Dkt. No. 5, *with* Dkt. No. 8.)

1 Plaintiff does not plausibly allege that Defendant is liable under the PLA or any other  
2 theory of liability. The amended complaint does not allege how Defendant's product was  
3 defectively designed, or that Defendant failed to warn Plaintiff of such a defect. Nor does  
4 Plaintiff allege that Defendant's product was not reasonably safe in construction or that it failed  
5 to conform to any warranties. Further, the amended complaint does not specify which of  
6 Defendant's products—the Fire Tablet or Silk Web Browser—was defective, or how it was  
7 defective. As the Court noted in its prior order, “while Plaintiff describes the harm she  
8 experienced—for example, ‘damaged computers and other appliances/devices’—the complaint  
9 does not explain how Amazon caused that harm.” (Dkt. No. 7 at 3.) The amended complaint is  
10 similarly bereft of facts making Plaintiff's claims plausible, and instead amount to “an  
unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678.

11 While the Court must liberally construe Plaintiff's complaint, it cannot supply an  
12 essential element that she failed to plead. *See Ivey v. Board of Regents of the Univ. of Ark.*, 673  
13 F.2d 266, 268 (9th Cir. 1982) (holding that district courts must construe *pro se* pleadings  
14 liberally but may not “supply essential elements of claims that were not initially pled”). For these  
15 reasons, the Court concludes that Plaintiff's amended complaint fails to state a claim upon which  
16 relief can be granted. 28 U.S.C. § 1915(e)(2)(b)(ii). In its prior order, the Court stated that “if  
17 Plaintiff files an amended complaint that fails to correct the deficiencies identified above, the  
18 Court may dismiss Plaintiff's claims with prejudice under 28 U.S.C. section 1915(e)(2)(B)(ii) for  
19 failure to state a claim upon which relief may be granted.” (Dkt. No. 7 at 4.) Plaintiff has failed  
20 to correct the pleading deficiencies identified in the Court's previous order. Indeed, the amended  
21 complaint is almost identical to the original complaint. Therefore, the Court DISMISSES  
22 Plaintiff's complaint without leave to amend. Plaintiff's motion to appoint counsel (Dkt. No. 6)  
is DENIED as moot. The Clerk is DIRECTED to close this case and to send Plaintiff a copy of  
this order.

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1 DATED this 2nd day of January 2019.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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